



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



Randy Howe
34 Rolling Ridge Road
Lebanon, NH 03766

ADMINISTRATIVE ORDER
No. WMD 03-02

January 9, 2003

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Randy Howe pursuant to RSA 147-A:14 and RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Randy Howe is an individual having a mailing address of 34 Rolling Ridge Road, Lebanon, NH 03766.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100 – 1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
3. Randy Howe is the owner of land at 34 Rolling Ridge Road, Lebanon, NH, more particularly described in a deed recorded in the Grafton County Registry of Deeds at Book 2249, Page 346, and identified on Lebanon Tax Map 161 as Lot 28 ("the Site").
4. On December 21, 1999, DES received a complaint alleging that drums of oil, vehicles, and tires have been buried at the Site.
5. On December 22, 1999, DES personnel investigated the complaint by conducting an Inspection of the Site ("Inspection"). The purpose of the Inspection was to determine Randy Howe's compliance status relative to RSA 147-A, RSA 149-M, the Hazardous Waste Rules, and the Solid Waste Rules. Mr. Howe was not present at the time of the inspection.
6. During the Inspection, DES personnel observed near the garage, two unlabeled and unsealed containers containing approximately three gallons of used oil, as well as an area of stained soil indicating spillage of used oil.

7. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste (hazardous waste) with the hazardous waste number of NH01.

8. RSA 147-A: 2, VI defines "[hazardous waste] generator" as "any person who owns or operates a facility where hazardous waste is generated."

9. Randy Howe is a generator of hazardous waste as defined by RSA 147-A:2, VI.

10. Env-Wm 807.06(b)(4) requires used oil generators to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle" at all times during accumulation and storage.

The containers identified in C.6 were not labeled.

12. Env-Wm 807.06(b)(5) requires used oil generators to ensure containers used to store used oil for recycle are sealed at all times unless actively adding waste to or removing waste from the container.

13. The containers identified in C.6 were not closed and sealed.

14. Env-Wm 807.06(b)(6) requires used oil generators to manage containers of used oil in such a manner as to prevent spillage, seepage, or other discharge of used oil into storm or sanitary sewers, onto the land, or into ground or surface waters.

15. Randy Howe did not prevent spillage of used oil.

16. Env-Wm 513.02(a) requires that hazardous waste generators "...shall be responsible for the cleanup of any hazardous waste discharge or any discharge of a material which, when discharged, becomes a hazardous waste."

17. The stained soil identified in C.6 represents a discharge of hazardous waste that requires the generator to clean up the discharge.

18. During the Inspection, DES personnel observed approximately 120 scrap tires and scrap metal in a wooded area adjacent to the lawn. DES personnel also observed scrap tires at the base of a recently filled slope at the edge of the woods.

19. During a follow-up inspection conducted on May 7, 2002 ("May 7 Inspection"), DES personnel observed an old stove at the Site. Mr. Howe was not present at the time of the inspection.

20. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."

21. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the

demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance.”

22. The stove, scrap tires, and scrap metal observed by DES personnel at the Site are solid waste as defined by RSA 149-M:4, XXII.

23. RSA 149-M:4, IX defines a “[solid waste] facility” as “a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste.”

24. The Site constitutes a “solid waste facility” as defined by RSA 149-M:4, IX.

25. Env-Wm 102.115 defines “owner” as “a person who owns a facility or part of a [solid waste] facility.”

26. Randy Howe is the owner of a solid waste facility.

27. RSA 149-M:9, I states that “No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES].”

28. A review of DES files shows Randy Howe has not applied for or holds a permit to operate a solid waste facility at any New Hampshire location.

29. RSA 149-M:9, II states that “ It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility.”

30. Solid waste has been disposed of at the Site. This Site is not approved to accept solid waste.

31. Env-Wm 2605.02(b) requires tires that are stored outdoors to be stored in one of the following manners:

- a. In covered trailers;
- b. In transfer containers; or
- c. In stockpiles as follows:
 - (1) The diameter of the piles shall not exceed 25 feet;
 - (2) The height of the piles shall not exceed 15 feet;
 - (3) Fire lanes no less than 25 feet in width shall be maintained around each pile;
 - (4) Each pile shall have a berm with a minimum height of 12 inches constructed around its perimeter capable of containing any pyrolitic oils or other liquids generated by fire; and
 - (5) The stockpiling facility shall have equipment, cover material and other supplies, including water, sufficient to control a fire until the nearest fire company capable of extinguishing the fire arrives.

32. The tires observed during the Inspection at the Site were not stored in accordance with Env-Wm 2605.02(b).

33. During the May 7, 2002 Inspection, DES personnel observed little or no change to the Site since the inspection conducted on December 22, 1999.

34. Env-Wm 2702.02(e) specifies that facilities and practices shall not cause air pollution in violation of federal or state law, any air quality rules implemented by DES, the conditions of any air quality permit issued by DES, or the New Hampshire State Implementation Plan under the Clean Air Act.

35. Env-A 1001.03(c)(4), adopted by the Commissioner of DES, states that the following types of burning shall be permissible without authorization from DES: burning of untreated wood from the construction or demolition of a building, provided that such burning shall be done in an area which shall be specified and approved by officials having jurisdiction over open burning.

36. On June 25, 2002, DES personnel conducted a follow-up inspection of the Site ("June 25 Inspection"). Mr. Howe was not present at the time of the inspection. DES personnel observed the remains of a small burn pile which included fireworks and metal, indicating solid waste had been burned. No other changes were noted since the previous inspection conducted on May 7, 2002.

37. On July 2, 2002, DES personnel conducted another follow-up inspection of the Site ("July 2 Inspection"). Mr. Howe was not present at the time of the inspection. DES personnel observed the remains of a small burn pile which included paper, small tires, and plastic, indicating solid waste had been burned. No other changes were noted since the previous inspection conducted on June 25, 2002.

38. Randy Howe burned solid waste which did not meet the criteria set forth in Env-A 1001.03(c)(4) at the Site.

39. As a result of the July 2, 2002 Inspection, DES personnel left a Report of Initial Complaint Investigation ("RICI") advising Randy Howe to remove all solid waste to a permitted solid waste facility; remove and manage the contents of all containers in accordance with the Hazardous Waste Rules and/or Solid Waste Rules as appropriate, and to cease burning solid waste.

40. On September 3, 2002, DES personnel conducted a follow-up inspection of the Site. Mr. Howe was not present at the time of the inspection. No changes were noted since the previous inspection conducted on July 2, 2002 Inspection. The burn pile observed during the June 25, 2002 Inspection showed continued use.

D. DETERMINATION OF VIOLATIONS

1. Randy Howe has violated RSA 149-M:9, I by operating an unpermitted solid waste facility.
2. Randy Howe has violated 513.02(a) by failing to remediate a discharge of hazardous waste.
3. Randy Howe has violated Env-Wm 807.06(b)(4) by failing to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle."
4. Randy Howe has violated Env-Wm 807.06(b)(5) by failing to seal all containers of used oil destined for recycle.

Randy Howe has violated 807.06(b)(6) by failing to prevent discharges of used oil to the soil

6. Randy Howe has violated Env-Wm 2605.02(b) by failing to comply with tire storage standards.

7. Randy Howe has violated Env-Wm 2702.02(e) by burning solid waste other than as allowed by Env-A 1000.

E. ORDER

Based on the above findings, DES hereby orders Randy Howe as follows:

Immediately cease operating an unpermitted solid waste facility

2. **Immediately** cease disposing of solid waste at an unpermitted facility
3. **Immediately** cease burning solid waste
4. **Within 15 days** the date of this Order, store tires in accordance with Env-Wm 2605.02(b) of the New Hampshire Solid Waste Rules, until such time as the tires can be removed to a permitted solid waste facility. A copy of this regulation is enclosed for reference.
5. **By April 1, 2003**, remove all solid waste at the Site to a permitted solid waste facility
6. **Within 7 days** the date of this Order, contact DES to arrange for test pits to be dug.
7. **Immediately** ensure that all containers of used oil destined for recycle are properly labeled with the words "Used Oil for Recycle" as specified by Env-Wm 807.06(b)(4).
8. **Immediately** ensure that all containers of used oil destined for recycle are properly sealed at all times, except when used oil is being added to or removed from the containers as specified by Env-Wm 807.06(b)(5).
9. **Within 30 days** the date of this Order, dispose of or recycle used oil at a facility or facilities authorized to accept use oil.
10. **By April 1, 2003**, containerize all oil contaminated soil and dispose of the contaminated soil at a facility permitted to accept it.
11. Submit one written status report to DES **by April 8, 2003**, certifying that corrective measures have been implemented and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed, and **copies of disposal receipts.**
12. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Michael Galuszka
NHDES
80 Glen Road
Gorham, NH 03581
Telephone: (603) 466-5389
e-mail: mgaluszka@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Randy Howe of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 147-A and RSA 149-M provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Randy Howe remains obligated to comply with all applicable requirements, in particular RSA 147-A and RSA 149-M. DES will continue to monitor Randy Howe's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

By copy of this Order, this matter is being referred to the New Hampshire Department of Environmental Services, Air Resources Division, for investigation of possible violations of RSA 125-C.

This Order is being recorded in the Grafton County Registry of Deeds so as to run with the land.

COPY

Philip J. O'Brien, Ph.D., Director
Waste Management Division

COPY

George Dana Bisbee, Acting Commissioner
Department of Environmental Services

Certified Mail/RRR: 7000 1670 0000 0584 3922

cc: DB/FILE/ORDER
Gretchen Rule, DES Legal Unit
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